

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5855 of 1999

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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Versus

CHIEF CONSERVATOR OF FOREST

Appearance:

MR MANOJ N POPAT for Petitioner No. 1

MR KP RAWAL, AGP, for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 13/08/2004

ORAL JUDGEMENT

1. The petitioner was appointed as Forest Guard on 1st January 1980 and was transferred to different places by the respondent authority. The present petition is filed mainly claiming for the benefits under the Government Resolution dated 5th July 1991. According to

the petitioner he is entitled to get the benefit of the Government Resolution with effect from 23rd October 1989, but the same was granted only with effect from 1st April 1996.

2.0 The petitioner was working with the respondents as Forest Guard since 1.1.1980 and thereafter he was transferred to different places under the respondent authorities.

2.1 There is a Government Resolution dated 5th July 1991 issued by the Government with respect to granting higher pay-scale to the employees who have completed nine years.

2.2 The petitioner made a representation to the respondent authorities on 15.2.1996 requesting to grant the benefit of higher scale to him. The respondent authorities, after considering the service record of the petitioner, granted higher pay scale to the petitioner with effect from 1.4.1996.

2.3 Since the petitioner has completed nine years of service by 1989, the petitioner made a request to the respondent authorities to grant him higher pay scale with effect from 23.10.1989 instead of 1.4.1996. The concerned authority therefore wrote a letter to the higher authority stating that the petitioner is entitled to get higher pay-scale with effect from 1989 instead of 1996. However, the higher authority rejected the request on the ground that the service record of the petitioner for the period from 1.1.1980 to 30.4.1984 is not available. Under the aforesaid circumstances the petitioner approached this Court by way of the present petition.

3.0 The main contention of the petitioner is that the scheme of the higher grade scale to deal with the problem of absence or restricted chances of promotions, Government had announced scheme of higher grade scales and it has come into effect with effect from 1987. As per the said scheme the petitioner has completed 9 years as on 23rd October 1989 and therefore on that day the petitioner should have been granted benefit under the aforesaid Resolution. It may be noted that though petitioner has completed nine years as on 31.12.1988, as he was on long leave, he claimed the benefit only with effect 23.10.1989.

4.0 The respondents have filed their reply and contended that as per clause 9 the appointing authority

for the post carrying higher scale shall be competent to grant the eligible employees the higher grade scale provided that the employee is fit for promotion on the basis of overall performance, qualifications and passing of prescribed examinations wherever prescribed. According to the respondents, the petitioner was not found fit or eligible for the higher grade scale.

5.0 The criterion for the next higher promotion is seniority and no adverse remarks were communicated to the petitioner. It was also contended that since the petitioner was transferred at his request by letter dated 2nd June 1990 he is not entitled for the seniority in respect of previous services.

5.1 The aforesaid contention of the respondents is required to be rejected on the face of it in view of the fact that if the seniority is not to be counted in respect of the earlier period, then the respondent could not have been given higher pay-scale to the petitioner. Therefore this is only an after thought. The petitioner had completed 9 years service as on 23rd October 1989 and therefore he is entitled for the pay-scale from that date.

5.2 The other contention that as per clause 9 the consideration by the Committee is also devoid of any merit inasmuch as the petitioner was never communicated about the same nor any adverse remarks are communicated to the petitioner. Merely because the petitioner is transferred to another department will not wipe out his past services and the respondents failed to point out anything to show that such services should not be counted for the purpose of granting higher pay scale. Therefore, it is clear that the petitioner is wrongly deprived of his right flowing from the aforesaid Resolution.

6.0 In the premises aforesaid, the present petition is required to be allowed and accordingly it is allowed. It is directed that the petitioner will be given higher pay scale with effect from 23rd October 1989 and he shall be entitled for all the consequential benefits flowing therefrom.

6.1 The respondents shall fix the pay scale of the petitioner within four months from the date of receipt of writ of this Court. Rule is made absolute accordingly with no order as to costs.

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